

this, stating (at 32) that “while Verizon makes much of Cox’s ‘ubiquitous network,’ it presents no evidence at all that customers are abandoning Verizon’s enterprise services in favor of those offered by Cox.” But Verizon did in fact provide such evidence’ and Cox itself admits that it is serving an extensive number of business customers.

Tom Rutledge, the COO of Cablevision – another one of the major cable operators in the New York MSA – told the company’s investors on March 28, 2007, that “we think there is a significant opportunity to take share out of the small business marketplace and the large business marketplace,” which he estimates at “a \$6 billion spend right now by small businesses and large businesses inside our footprint for telecom.”” Cablevision has “identified over 600,000 businesses inside our footprint that we passed with cable that were serviceable today,” using Cablevision’s *existing* plant that was originally deployed to serve residential customers.⁹² Cablevision determined this by “build[ing] a database” by “collect[ing] various business databases and we physically walked out our plant and identified all the small businesses inside our footprint and cross-referenced them against all the various databases.”⁹³ Through this process, Cablevision determined that its existing cable plant could be used to serve 600,000 businesses because its “physical assets on the poles or in the conduits were in front of that building and all

⁹⁰ See Providence Pet’n at 17-20; Providence Decl. ¶ 44 & Exh. 7; Va. Beach Pet’n at 18-19; Va. Beach Decl. ¶¶ 42-43 & Exh. 7.

⁹¹ Cablevision/Rutledge MTE Conf. Tr. at 2.

⁹² *Id.* at 7. Cablevision’s statements belie Sprint’s claim (at 5) that Cable’s network is concentrated in residential areas. The fact is that many businesses – in both urban and suburban areas – are commingled in residential areas where cable networks already exist.

⁹³ Cablevision/Rutledge MTE Conf. Tr. at 7

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we needed to do was put in an installation drop to create connectivity to that building.”⁹⁴ Cablevision accordingly “began marketing those buildings last year, and we are now in the middle of earnestly marketing the 600,000 business marketplace.”⁹⁵ Mr. Rutledge has said that Cablevision has “more fiber in the [New York/New Jersey/Connecticut] tri-state area” “than any phone company,”⁹⁶ and that Cablevision already has fiber service to twice as many buildings in its metropolitan New York footprint as Verizon does.” The company has developed “a full suite of high-end and middle and low market products in IP form to go into those markets and compete against the incumbent phone operator with superior products, superior service and a superior reputation in that marketplace.”⁹⁸ The company has “developed an inbound sales force” as well as an “outbound sales force” and a “door-to-door sales force” to serve business customers, as well as a “separate service call facility to handle customer questions and staffed it 24 hours a day that we can provide the highest quality service.” The company claims that it will “charge about half of what Verizon or AT&T charges for the same service with a higher-quality service and a more sophisticated service, too, because it is all IP. And in terms of data capacity, in

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ Scott Moritz, *Cablevision's Got Fiber*, TheStreet.com (Sept. 20, 2006) (internal quotation marks omitted), <http://www.thestreet.com/newsanalysis/techtelecom/10310196.html>.

⁹⁷ See Mike Farrell, *Cablevision Revs Up for Business Blitz*, Multichannel News (Sept. 25, 2006), <http://www.multichannel.com/article/CA6374465.html>.

⁹⁸ Cablevision/Rutledge MTE Conf. Tr. at 2

⁹⁹ *Id.* at 7.

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terms of voice quality, it is equal to or better than anything the incumbents provide and build for the future.”¹⁰⁰

Several commenters claim that Verizon failed to show that cable operators are capable of serving business customers throughout the six MSAs, and argue that cable networks predominantly serve residential areas and can reach only customers within proximity of their networks.” These are the same arguments that the Commission rejected in Omaha, however, based on the same evidence that exists for each of the six MSAs here. In particular, the Commission relied on the fact that Cox had “strong success in the mass market, its possession of the necessary facilities to provide enterprise services, its technical expertise, its economies of scale and scope, its sunk investments in network infrastructure, its established presence and brand in the Omaha MSA, and its current marketing efforts and emerging success in the enterprise market.” *Omaha Forbearance Order* ¶ 66. The Commission also noted that Cox had particularly strong incentives to compete for enterprise customers as compared to the mass market, because the “revenue potential” is greater. *Id.* In reaching this conclusion, the Commission found the fact that Cox’s existing network did not necessarily reach every individual business location as “not . . . dispositive” in light of the other evidence demonstrating Cox’s incentives and ability to serve these customers. *Id.* ¶ 66 n.174.

As Verizon previously explained, and as the more recent evidence and comments of the cable operators described above show, this analysis applies with equal force here.

¹⁰⁰ *Id.*

¹⁰¹ Broadview *et al.* at 31-33; ACN *et al.* at 23; NCTA at 7-8.

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As demonstrated above, each of the major cable companies in the six MSAs – Comcast, Time Warner, Cox, and Cablevision – has had “strong success in the mass market.” Each of these companies operates ubiquitous networks and, therefore, possesses “the necessary facilities to provide enterprise services,” and has in fact begun doing so. And each of these cable operators possesses “technical expertise, [] economies of scale and scope, [] sunk investments in network infrastructure, [and] established presence and brand.”¹⁰² In light of all this, the Commission should conclude, as it did in Omaha, that the fact that these cable operators’ networks may not reach every individual business location is “not . . . dispositive” in light of the other evidence demonstrating these companies’ incentives and ability to serve these customers.

In any event, to the extent the Commission is concerned about the ability of cable companies to reach enterprise customers with their networks, it should require the cable operators to provide these data. Of course, the fact that cable companies have withheld such information, and have not seriously disputed Verizon’s evidence that these companies are ready and able to serve enterprise customers, strongly suggests that these data will support Verizon’s position.¹⁰³ In fact, one analyst, Buckingham Research

¹⁰² While NCTA argues (at 8) that “most cable operators have not achieved the scope of operations needed to serve large enterprise customers,” that is obviously not the case of for the major cable operators who serve the vast majority of the MSAs at issue here.

¹⁰³ See *International Union*, 459 F.2d at 1336.

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Group, has recently estimated that cable companies can use their existing plant to target more than 85 percent of commercial revenues.¹⁰⁴

Finally, several commenters argue that, even assuming cable companies *could* reach business customers with their networks, they would not necessarily be able to provide the types of services that business customers purchase.¹⁰⁵ Tellingly, however, cable operators themselves do not indicate that their service offerings contain such limitations. To the contrary, as Verizon demonstrated, each of the cable operators indicates that it provides voice and data services that meet the needs of enterprise customers.¹⁰⁶ Moreover, it is incredulous to suggest that cable operators are investing hundreds of millions of dollars to serve business customers, yet do not plan to offer the services that business customers demand. As noted above, Cablevision admits that it is offering a full platform of services to business customers using its existing network, which shows that other cable companies can follow suit. Independent analysts have reached the same conclusion.¹⁰⁷

¹⁰⁴ See Quasir Hasan & May Tang, Buckingham Research Group, *Cable Goes Commercial: Examining Cable's Next Growth Phase* at 20, Exh. 14 (Jan. 11, 2007) ("*Buckingham Research/Cable Goes Commercial Report*").

¹⁰⁵ Broadview *et al* at 35-36; Time Warner Telecom at 39-42

¹⁰⁶ See NY Pet'n at 19-22; NY Decl. ¶¶ 51-55 & Exh. 7; Boston Pet'n at 17-20; Boston Decl. ¶¶ 45-48 & Exh. 7; Phil. Pet'n at 19-22; Phil. Decl. ¶¶ 47-49 & Exh. 7; Pitt. Pet'n at 17-20; Pitt. Decl. ¶¶ 41-42 & Exh. 7; Providence Pet'n at 17-20; Providence Decl. ¶¶ 43-45 & Exh. 7; Va. Beach Pet'n at 18-19; Va. Beach Decl. ¶¶ 42-43 & Exh. 7.

¹⁰⁷ See *Buckingham Research/Cable Goes Commercial Report* at 3 ('we believe a number of crucial ingredients have either fallen in place over recent months, or will shortly fall into place, to make the long promised cable entry into commercial services a reality. The recent launch of residential telephony across nearly all major cable systems finally gives the cable industry the full product portfolio it needs to address the needs of

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2. *Competitive Fiber Networks*

Verizon's petitions demonstrated that in each of the six MSAs there are extensive competitive fibernetworks. For each *MSA*, Verizon provided data on the number of known competing providers that operate fiber networks; the number of route miles of those networks; maps of the network; and the percentage high-capacity special access revenues and retail switched business lines located in wire centers with competitive fiber.” As Verizon has previously explained, these data are from GeoTel and are not comprehensive, but instead understate the deployment of competitive fiber, perhaps significantly.” Nonetheless, these data demonstrate that competitive fiber reaches virtually all areas of the six MSAs where enterprise customers are concentrated.”

Competitive fiber providers have deployed fiber in wire centers that account for [Begin

commercial customers, for whom voice services still drive the bulk of purchasing decisions There are several other catalysts that we believe are fueling cable's interest in commercial services at this stage, including the vendor vacuum created by a wave of mergers and acquisitions within the telecom landscape, the growing need for higher bandwidth products beyond the standard 1.5 Mbps T1 connection provided by telecom incumbents, and the recent commercial *availability* of cable modems capable of handling multiple phone lines and integrating into corporate PBX systems.”);Anthony Noto, *et al.*, Goldman Sachs, *Multiyear ROIC Expansion Should Drive Stocks – Comcast Top Pick* at 13 (Jan. 3, 2007) (“Now that most of the cable companies can offer small to medium-sized businesses both data and voice, we believe that the MSOs will more aggressively pursue this opportunity.”).

¹⁰⁸ See NY Pet'n at 22-23; NY Decl. ¶ 46 & Exhs. 5-6; Boston Pet'n at 20-21; Boston Decl. ¶ 40 & Exhs. 5-6; Phil. Pet'n at 22-23; Phil. Decl. ¶ 42 & Exhs. 5-6; Pitt. Pet'n at 20-21; Pitt. Decl. ¶ 36 & Exhs. 5-6; Providence Pet'n at 20-21; Providence Decl. ¶ 38 & Exhs. 5-6; Va. Beach Pet'n at 20; Va. Beach Decl. ¶ 37 & Exhs. 5-6.

¹⁰⁹ See NY Decl. ¶ 10; Boston Decl. ¶ 9; Phil. Decl. ¶ 10; Pitt. Decl. ¶ 11; Providence Decl. ¶ 9; Va. Beach Decl. ¶ 11.

¹¹⁰ Contrary to Sprint's claims (at 14-15), the fiber maps and other competitive fiber data in Verizon's petitions did not treat MCI's fiber as part of the universe of competitive fiber.

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While several commenters take issue with various aspects of Verizon's data, most of these parties have failed to provide any data of their own. Not one of the approximately three dozen competing carriers who have submitted comments, and who indicates elsewhere that it owns or operates competitive fiber, has provided details of these competitive facilities. For example, none has provided a map of its networks, the customer locations it serves with that network, or even more generalized statistics such as its number of fiber route miles or buildings served. Moreover, to the extent they criticize Verizon's data, the commenters largely rehash arguments that the Commission has previously rejected or that are otherwise without merit.

One set of commenters – Broadview *et al.* – claims (at 46-49) to “have obtained independent data regarding the number of Commercial Buildings served by competitors over their own facilities in the six MSAs for which Verizon has requested forbearance.” (Footnote omitted.) But these data – whose source Broadview *et al.* does not even reveal, and which they do not provide in the record – are flawed, even based on the limited summary of the data that Broadview *et al.* provide.” These data purport to compare the

¹¹¹ The limited summary data that Sprint provides (at 18-20 & App. A) are likewise unreliable. Sprint claims that it maintains a proprietary database of building addresses served by competitive providers. Sprint fails to submit its data, and instead provides a raw number of locations where it serves wireline customers together with its estimate of the number of competitive providers at those locations. Among other things, Sprint fails

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number of commercial CLEC lit buildings with the total number of commercial buildings for a single wire center in each of the **six** MSAs that they claim (at 47) is the wire center with the highest percentage of CLEC lit buildings in that **MSA**. But Broadview's analysis compares *all* commercial locations, rather than locations at which there is demand for high-capacity services. Broadview's calculation of what percentage of commercial buildings CLECs have lit is therefore meaningless, because the vast majority of the buildings in its denominator are commercial locations (such as small businesses) at which there is no such demand. Moreover, the number of existing CLEC-lit buildings represents only a small percentage of the total number of buildings that CLECs are readily capable of serving with their existing fiber networks, which is the more relevant total. As the Commission has recognized, large numbers of buildings are sufficiently close to a CLEC fiber ring and generate sufficient demand to justify the extension of competitive fiber to their location. See *Verizon/MCI Order* ¶¶ 32, 40.

3. *Retail Enterprise Competition*

Verizon's petitions demonstrated that there are a large number of competitors that provide extensive retail competition for enterprise customers in each of the six MSAs.¹¹²

to indicate what percentage of its total demand (as opposed to locations) is covered by competitive providers, and does not provide enough information about its customers at its locations for the Commission to draw reliable conclusions about its data. Sprint also claims (at 21-22 & App. B) that there are insufficient competitive fiber suppliers at locations where Sprint has mobile switching centers and cell sites, but the Commission has already found that access to unbundled facilities is not justified at such locations, given that intense wireless competition has evolved without such access. See *Triennial Review Remand Order* ¶ 34.

¹¹² See NY Pet'n at 23-24; *NY* Decl. ¶¶ 56-67, 69-71; Boston Pet'n at 22; Boston Decl ¶¶ 49-60, 63-65; Phil. Pet'n at 23-24; Phil. Decl. ¶¶ 50-64, 66-68; Pitt. Pet'n at 21-22;

Verizon explained that these competitors include not only traditional telecom carriers, but also managed service providers, systems integrators, and equipment vendors.¹¹³ Verizon also demonstrated that many competitors are using their own facilities to provide a large number of business lines throughout each of the MSAs.¹¹⁴ The Commission reached these same conclusions in the *Verizon/MCI Order*, where it examined retail enterprise competition throughout Verizon's region. *See Verizon/MCI Order* ¶¶ 56-81.

Recent data provide further confirmation of the large and growing competition for enterprise customers in the six MSAs. As shown in Table 6, the number of business E9 11 listings obtained by competing carriers in the last year has increased in each of the six MSAs, and in those MSAs for which Verizon has complete data the one-year increase has been dramatic – up [Begin Confidential] [End Confidential] percent. *See* Table 6; Lew/Wimsatt/Garzillo Reply Decl. ¶ 16, Table 9.” According to these same data from December 2006, competing carriers were using their own switches to serve business lines in a significant number of wire centers in each of the six MSAs, and in each MSA these wire centers represent the overwhelming majority of Verizon’s retail

Pitt. Decl. ¶¶ 43-53, 55-57; Providence Pet’n at 21-22; Providence Decl. ¶¶ 46-51, 55-57; Va. Beach Pet’n at 21; Va. Beach Decl. ¶¶ 44-51.

¹¹³ *See* NY Pet’n at 23; NY Decl. ¶ 50; Boston Pet’n at 22; Boston Decl. ¶ 44; Phil. Pet’n at 23; Phil. Decl. ¶ 46; Pitt. Pet’n at 21; Pitt. Decl. ¶ 40; Providence Pet’n at 21; Providence Decl. ¶ 42; Va. Beach Pet’n at 21; Va. Beach Decl. ¶ 41.

¹¹⁴ *See* NY Pet’n at 24-26; NY Decl. ¶¶ 56-66; Boston Pet’n at 23; Boston Decl. ¶¶ 49-60; Phil. Pet’n at 24-25; Phil. Decl. ¶¶ 50-64; Pitt. Pet’n at 22-23; Pitt. Decl. ¶¶ 43-53; Providence Pet’n at 22; Providence Decl. ¶¶ 46-51; Va. Beach Pet’n at 22; Va. Beach Decl. ¶¶ 44-48.

¹¹⁵ As previously explained, data for Pittsburgh, Providence, and Virginia Beach are incomplete. *See* Lew/Wimsatt/Garzillo Reply Decl. ¶¶ 7-9.

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switched business lines in the **MSA**. *See* Tables 7 & 8. Exhibits **1.A-1.F** to the
Lew/Wimsatt/Garzillo Reply Declaration provide the number of business E911 listings
that Verizon was able to associate with each wire center in the six MSAs.

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Verizon also demonstrated that competitors in each of the MSAs were extensively using Verizon's special access services to serve business customers, which the Commission in Omaha deemed relevant to its analysis of enterprise competition. *See Omaha Forbearance Order* ¶ 68.¹¹⁶ Based on Verizon's wholesale billing records from December 2006, competitors are using Verizon's special access services to serve business customers in between **[Begin Confidential]** **[End Confidential]** percent of the wire centers in the six MSAs, which account for between **[Begin Confidential]**

[End Confidential] percent of Verizon's retail switched business lines in these MSAs. *See* Lew/Wimsatt/Garzillo Reply Decl. ¶ 15, Tables 10-11 & Exh. 6.¹¹⁷ These same data also show that, in the last year alone, the number of voice-grade equivalent

¹¹⁶ *See* NY Pet'n at 25-26; NY Decl. ¶ 48; Boston Pet'n at 24; Boston Decl. ¶ 42; Phil. Pet'n at 25-26; Phil. Decl. ¶ 44; Pitt. Pet'n at 23-24; Pitt. Decl. ¶ 38; Providence Pet'n at 22-23; Providence Decl. ¶ 40; Va. Beach Pet'n at 23; Va. Beach Decl. ¶ 39.

¹¹⁷ Exhibit 6 to the Lew/Wimsatt/Garzillo Reply Declaration provides the wire-center-level detail of where competitors are using Verizon's special access in each of the six MSAs.

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lines that competing carriers serve using both special access DS3s and DS1s has increased in each of the MSAs (with the exception of competitors' use of DS3 special access in the Providence MSA, which declined slightly). *See* Lew/Wimsatt/Garzillo Reply Decl. ¶ 59, Tables 14-15.

Verizon also demonstrated that its business switched access lines have declined.” Data from 2006 show that, in the last year alone, Verizon's retail business switched access lines declined by an additional [Begin Confidential] [End Confidential] percent in the six MSAs. *See* Table 9; Lew/Wimsatt/Garzillo Reply Decl. ¶ 10, Table 2. And, as explained above, these declines are even greater if compared, as they should be, to historical growth of access lines.

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The comments and other recent evidence confirm that enterprise competition is extensive and growing in each of the six MSAs. As an initial matter, there are at least 15-

¹¹⁸ *See* NY Pet'n at 24-25; NY Decl. ¶ 12; Boston Pet'n at 23; Boston Decl. ¶ 11; Phil. Pet'n at 25; Phil. Decl. ¶ 12; Pitt. Pet'n at 22-23; Pitt. Decl. ¶ 13; Providence Pet'n at 22; Providence Decl. ¶ 11; Va. Beach Pet'n at 22; Va. Beach Decl. ¶ 13.

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20 commenters in this proceeding who provide enterprise services in one or more of the MSAs at issue here. Exhibit 11 to the Lew/Wimsatt/Garzillo Reply Declaration contains a listing of these commenters and the **MSAs** at issue in *which* they provide enterprise services. Unfortunately, however, none of these competing carriers provides detailed data on the extent to which they serve enterprise customers. For example, only two competitors provide information on the business lines they serve in the context of disputing Verizon's data, but do not provide line counts for all the MSAs at issue they currently serve. Neither these or any other competing carriers provide MSA-level detail of their facilities used to serve enterprise customers, the extent to which they obtain facilities from third parties, or their use of Verizon's special access.

As Exhibit 11 to the Lew/Wimsatt/Garzillo Reply Declaration demonstrates, the recent statements of competitive carriers filing comments here confirms that they are competing successively for enterprise customers. To cite a few examples, XO announced in January 2007 that "more than 7,500 businesses nationwide have deployed XOptions Flex and enjoy the benefits of an integrated VoIP services solution that provides enhanced features, functionality and value for voice, Internet access and web hosting, all in one simple package." Time Warner Telecom has stated that 2006 "was an incredibly strong year for the Company," and reports that in the fourth quarter of 2006 it "[g]rew enterprise revenue 43% year over year, and 29% sequentially."¹²⁰

¹¹⁹ XO Communications Press Release, *XO Communications Marks 100,000 Business VoIP Users* (Jan. 24, 2007).

¹²⁰ Time Warner Telecom Press Release, *Time Warner Telecom Reports Strong Fourth Quarter 2006 Results* (Feb. 6, 2007).

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ITC^DeltaCom announced at the beginning of 2007 that its "focus on profitable growth has resulted in a very positive progression of financial results in 2006" that has given it "the capital necessary to continue our pursuit of growth in our core facilities-based business." ""

A few commenters take issue with Verizon's use of business E911 listings as a proxy to estimate business lines that competing carriers are serving. Although Verizon provided in its petitions E911 listings-based estimates of business lines for dozens of combinations of competitors and MSAs, the commenters challenge only a few of these examples. In particular, Cox claims (at 27) that its number of business E911 listings exceed its number of commercial access lines in the Virginia Beach MSA (though Cox does not make this claim for the Providence MSA, *see* Cox at 32). In addition, XO claims that its number of business E911 listings exceeds its number of commercial access lines in the New York, Boston, Philadelphia, and Pittsburgh MSAs. *See Broadview et al.* at 14 & Youngers Decl. ¶¶ 4, 9-11. These carriers provide no explanation for why the number of E911 listings they have obtained exceeds the number of lines they are serving, but, in any case, these few challenged examples hardly prove that competitors' business E911 listings are an unreliable proxy for competitors' business lines.¹²² To the contrary,

¹²¹ ITC^DeltaCom Press Release, *ITC^DeltaCom Announces Network Upgrade to Deliver Multi Meg and IP Enabled Voice and Data Services* (Jan. 17, 2007) (quoting Scott Yelton, ITC^DeltaCom Director of Product Strategy); *ITC^DeltaCom Announces Transaction for \$21 Million in New Funding To Support Growth*, PR Newswire US (Oct. 30, 2006) (quoting Randall E. Curran, ITC^DeltaCom's CEO).

¹²² *Broadview et al.* claim that in various state proceedings in New York, Oklahoma, and Kansas it was shown that E911 data overstate the number of business lines. *See Broadview et al.* at 13 & Gillan Decl. ¶¶ 11-16. As Dr. Taylor's declaration shows, this

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as Dr. Taylor explains, and as Verizon has previously demonstrated, E911 listings are a reliable proxy for assessing competition, the Commission and other regulatory agencies have relied on such data in the past, and the commenters' claims to the contrary are misplaced. *See* Taylor Decl. ¶¶ 37-51.¹²³

Several commenters raise various arguments that special access is insufficiently competitive and, therefore, should not be considered a viable option for competitors to provide retail competition.¹²⁴ But the Commission has consistently rejected these arguments, both in the *Omaha Forbearance Order* and in the *Verizon/MCI Order*. *See Omaha Forbearance Order* ¶ 68; *Verizon/MCI Order* ¶¶ 52, 56, 81. In both cases, the Commission found that competing carriers are capable of and are competing successfully in the retail market using special access.¹²⁵ That conclusion is obviously correct. As demonstrated above, competing carriers are using special access extensively in each of the MSAs, and also indicate that they are competing successfully. Not a single

is not true. In each case, Dr. Gillan's testimony proved unreliable. *See* Taylor Decl. ¶¶ 45-51.

¹²³ *See also* Verizon's October 30, 2006, November 6, 2006, and December 5, 2006 filings in this docket (providing examples of federal and state agencies reliance on E911 data in regulatory proceedings).

¹²⁴ *See* Sprint at 23, 25-26; Broadview *et al.* at 56; ACN *et al.* at 8, 36.

¹²⁵ Some commenters claim that granting forbearance would violate the condition of the Verizon/MCI merger that restricts Verizon from raising special access and UNE prices for a period of two years. *See* Broadview *et al.* at 3-4, 72; Comptel at 11-13. There is no merit to this claim. If Verizon receives the requested forbearance, it will still be subject to the conditions of the *Verizon/MCI Order*. Verizon's request for forbearance did not seek a waiver or modification of those conditions, and does not affect those conditions.

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competing carrier here even asserts, much less proves, that it is unable to compete successfully today using special access.¹²⁶

Verizon's data show that competitors are in fact using special access much more extensively than they are using UNEs. As Exhibit 10 to the Lew/Wimsatt/Garzillo Reply Declaration shows, competing carriers as a whole are purchasing between [Begin Confidential] [End Confidential] percent of DS1s and between [Begin Confidential] [End Confidential] percent of DS3s from Verizon as special access rather than UNEs in each of the six MSAs. Moreover, just as this is true for competitors as a whole, virtually all of the major competing carriers in each of these MSAs also are purchasing most (and typically the vast majority or all) of their DS1s and

¹²⁶ Broadview *et al.* rehashes (at 66-67, 70-71) claims that Verizon's tariff and contract policies impede competition by making it difficult to switch from Verizon's special access service to competitive offerings. This claim is misplaced. Verizon has a number and variety of special access discount pricing plans, some of which require minimum circuit commitments for the type of flexibility they provide customers and others, with no minimum commitment. Verizon has a commitment discount plan that offers customers flexibility to move circuits in and out of the plan regardless of term as long as customers maintain a minimum commitment, but Verizon also has a term plan that offers customers the same level of discounts with no minimum commitment. These plans are available to all customers. In addition, the termination penalties for early termination for each of these plans require the customer to pay only the difference between the discounts it received for the term commitment made versus the discounts it would have received under the shorter term so that the customer is no worse off than if it had chosen the lower term commitment. Verizon also offers additional discounts through pricing flexibility contracts in areas where Verizon has obtained pricing flexibility. These plans, such as the one referenced by Broadview, provide discounts in addition to the substantial discounts that are available under Verizon's term and discount plans. As the D.C. Circuit recognized in *BellSouth v. FCC*, 469 F.3d 1052 (D.C. Cir. 2006), these additional discounts may be offered in exchange for a carrier's agreement to limit the number of circuits purchased as UNEs. This type of tit-for-tat bargaining is exactly what one would expect in a competitive market.

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DS3s as special access rather than as UNEs. *See* Lew/Wimsatt/Garzillo Reply Decl. Exh 10.

Finally, a few commenters argue that, while Verizon may have lost business switched access lines, it still has a significant retail market share.¹²⁷ As explained above, however, the Commission has recognized that historic measures of static market share are not especially meaningful in dynamic markets such as this one. In any event, even the data on which the commenters rely prove that competitors have made significant inroads. ACN *et al.* cite (at 7) the Commission's data showing that competing carriers now serve 36 percent of retail business switched access lines in New York, 34 percent in Massachusetts, 38 percent in Pennsylvania, 46 percent in Rhode Island, and 27 percent in Virginia.¹²⁸ Moreover, these data understate the competition for switched voice services provided to enterprise customers as they do not account for the data, wireless, and other alternatives that enterprise customers are using in place of traditional wireline access lines. *See* Taylor Decl. ¶ 22.

¹²⁷ *See* NCTA at 9; ACN *et al.* at 7; Ad Hoc at 3 & Selwyn Decl. ¶ 9

¹²⁸ Dr. Selwyn purports to calculate "VGEs provided by Verizon as Special Access" for the six MSAs, but, as Dr. Taylor demonstrates, his analysis is fatally flawed. *See* Selwyn Decl. ¶ 9; Taylor Decl. ¶ 31. Dr. Selwyn's analysis attributes all Verizon-provided special access as part of Verizon's share, even though a significant amount of special access is provided on a wholesale basis to other carriers, who in turn use that special access to provide retail services to enterprise customers. While Dr. Selwyn combines Verizon's switched and special access lines to calculate the numerator, he counts only CLEC retail business switched access lines and ignores CLEC special access lines. *See* Taylor Decl. ¶ 31.

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III. THE REQUESTED FORBEARANCE IS IN THE PUBLIC INTEREST

The extensive competition for both mass-market and enterprise customers in each of the six MSAs satisfies not only the first two parts of the forbearance test, but also supports a finding that eliminating the regulations in question is in the public interest. *See Omaha Forbearance Order* ¶¶ 47, 75. Moreover, as Verizon demonstrated in its petitions, forbearance also is in the public interest because the costs of the unbundling obligations and dominant-carrier regulation of interstate switched access services that Verizon faces in the six MSAs outweigh the benefits.¹²⁹ While some of the commenters take issue with various aspects of Verizon's showing, their claims are misplaced.

Several commenters argue that forbearance from unbundling regulation would impede investment, including in broadband infrastructure.¹³⁰ But both the Commission and the courts have repeatedly found that the opposite is true – that unbundling is likely

¹²⁹ See NY Pet'n at 26-29; Boston Pet'n at 24-28; Phil. Pet'n at 26-29; Pitt. Pet'n at 24-27; Providence Pet'n at 23-27; Va. Beach Pet'n at 24-27.

¹³⁰ See *EarthLink et al.* at 40-42; *Telecom Investors* at 8, 15-17; *ACN et al.* at 12. EarthLink also claims (at 46-47) that Verizon has not demonstrated why forbearance from FCC discontinuance requirements for retiring copper plant is warranted. But as Verizon has explained elsewhere, it makes no sense to require Verizon to maintain costly copper facilities, rather than invest in more efficient fiber facilities. See Verizon Comments, *Petitions for Rulemaking and Clarification Regarding the Commission's Rules Applicable to Retirement of Copper Loops and Copper Subloops*, RM Docket No. 11358 (FCC filed Mar. 1, 2007). While EarthLink claims that it is capable of providing valuable services over copper, Verizon should not be required to make large investments in EarthLink's business model. In any event, concerns about copper retirement are premature. Verizon – which is far and away the largest current investor in fiber-to-the-premises networks – is not yet currently retiring copper loops on a large scale anywhere in the country as the result of the deployment of its FiOS network. Instead, at this stage in Verizon's rollout of FiOS, it is understandably focusing on deploying fiber to more areas, and to switching over those customers who order FiOS services, rather than retiring legacy facilities.

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to deter investment.”” This is borne out by experience. In the three years after the FCC eliminated unbundling of broadband facilities in the *Triennial Review Order*, the number of high-speed connections increased by more than two-and-a-half times – from less than 23 million lines in June 2003 to nearly 65 million lines in June 2006.¹³² Those increases have been across numerous platforms, with cable broadband connections more than doubling (from 13.7 million to 28.5 million lines), DSL increasing by 265 percent (from 8.9 million to 23.5 million), and fiber connections increasing more than six-fold (from 111,386 to 700,083 lines).¹³³

Several commenters also claim that Verizon’s petitions are not in the public interest because they do not demonstrate that forbearance will enhance competition.”“ But as the Commission found in the *Omaha Forbearance Order*, eliminating the regulations at issue will enhance competition by removing rules that “limit[] [Verizon’s] ability to respond to competitive forces and, therefore, its ability quickly to offer consumers new pricing plans or services packages.” *Omaha Forbearance Order* ¶ 47. In addition, removing dominant-carrier regulation will increase regulatory parity between

¹³¹ See Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, ¶ 272 (2003) (“*Triennial Review Order*”), vacated in part and remanded, *USTA v. FCC*, 359 F.3d 554 (D.C. Cir.), cert. denied, 543 U.S. 925 (2004); *United States Telecom Assoc. v. FCC*, 359 F.3d 554, 580-84 (D.C. Cir. 2004).

¹³² Ind. Anal. & Tech. Div., Wireline Competition Bureau, FCC, *High-speed Services for Internet Access: Status As of June 30, 2006* at Table 1 (Jan. 2007).

¹³³ *Id.*

¹³⁴ *ACN et al.* at 11-12; *Cavalier* at 14-18; *Integra* at 7-8.

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Verizon and its rivals, which the Commission also has recognized as pro-competitive.

See id. ¶ 49.

Finally, several commenters claim that Verizon has failed to show why forbearance from the *Computer III* requirements is justified.¹³⁵ That is not true. The *Computer III* requirements were imposed for the same core reason as the other requirements at issue here – namely, to prevent the Bell companies from using their control over “the local exchange network and the provision of basic services . . . to engage in anticompetitive behavior against [information service providers] that must obtain basic network services from the [Bell companies] in order to provide their information service offerings.””¹³⁶ As the Supreme Court noted, the “traditional reason”¹³⁷ for the *Computer Inquiry* rules “was that the telephone network was the primary, if not exclusive, means through which information service providers can gain access to their customers.”¹³⁷ As described above, Verizon has demonstrated that this is no longer the case today, and that there are now multiple competitive options for local access in each of the six MSAs. Forbearance from the antiquated *Computer III* regime is therefore in the public interest.

¹³⁵ Broadview *et al.* at 60; Comptel at 9-10; NASUCA at 31-36

¹³⁶ *Computer III Further Remand Proceedings*, Further Notice of Proposed Rulemaking, 13 FCC Rcd 6040, ¶ 43 (1998).

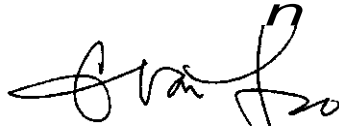
¹³⁷ *National Cable & Telecomms. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967, 1001 (2005) (internal quotation marks and alterations omitted).

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IV. CONCLUSION

For the foregoing reasons, Verizon requests that the Commission forbear from loop and transport unbundling regulation pursuant to **47** U.S.C. § 251(c) and dominant carrier regulation for switched access services in the New York, Boston, Philadelphia, Pittsburgh, Providence, and Virginia Beach MSAs

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ATTACHMENT A

Verizon's Submission of E911 Listings Data in Regulatory Proceedings Does Not Violate State Laws

A number of commenters argue that Verizon's submission of E911 data in this proceeding violates the laws of various states, including New Hampshire, Rhode Island, Delaware, Massachusetts, New Jersey, New York, North Carolina, Virginia, and Pennsylvania.¹ These claims are wrong. None of the states at issue here has passed laws that prohibit Verizon from submitting E911 listings data in a regulatory proceeding. To the contrary, in most or all of these states, Verizon has submitted E911 listings data to the state commission in the same manner and for the same purpose that such data were submitted here, those submissions were challenged by the same commenters raising the issue here, and not once has a state Commission found that Verizon violated state law.

New Hampshire. Verizon's submission of E911 data does not violate NH RSA 106-H:9.² That provision states only that "the records and files of the department, *related to this section*, are confidential and privileged." NH RSA 106-H:9 § III(a) (emphasis added). Thus, it is only records of the Department of Safety that Verizon is restricted from disclosing. The E911 data that Verizon submitted here, however, are not "records and files of the department" that Verizon obtained in connection with NH RSA 106-H:9.

NH RSA 106-H:9 establishes a surcharge mechanism to fund the E911 system. Verizon is required to collect the surcharge from individual subscribers and remit those amounts to New Hampshire's E911 bureau, which in turn forwards the funds to the state's treasurer. *See* id. § I. Thus, by its terms, the records and files covered by NH RSA 106-H:9 are those associated with collecting and remitting the E911 surcharge. The legislative history confirms this view. The Senate report states that the rule "requires the department of safety to keep confidential and privileged any information it obtains *in the administration of the enhanced 911 surcharge.*" New Hampshire Senate Bill 152-FN (June 29, 2005) (emphasis added), available at <http://www.gencourt.state.nh.us/legislation/2005/sb02.html>.

The E911 data that Verizon submitted here are not governed by NH RSA 106-H:9 because they do not relate to Verizon's collection of the E911 surcharge. These data were instead obtained from the E911 database in connection with Verizon's role as E911 database administrator. Verizon's role as E911 database administrator is governed by separate state rules and privately negotiated contracts with the state, and is completely distinct from Verizon's role in collecting E911 surcharges. Verizon has adhered to all of the confidentiality provisions in the

¹ See EarthLink at 56-57 & Exh. 1; see also NASUCA at 67-68; Broadview at 12; Cavalier at 14; Comptel at 3-5; Cox at 15.

² Although the New Hampshire PUC initially filed comments making this claim, it subsequently withdrew its claim, citing its "untimeliness," but did not refile. *See* The New Hampshire Public Utilities Commission Amended Joinder in Competitive Carriers' Motion to Dismiss, WC Docket No. 06-172 (filed Feb 7, 2007); The New Hampshire Public Utilities Commission Request To Withdraw Pleading, WC Docket No. 06-172 (filed Feb. 12, 2007).

relevant rules and contracts governing its role as E911 database administrator, which no party disputes.

Rhode Island. Verizon's submission of E911 data does not violate RI Stat. Ann. § 39-21.1-4. That provision states that "[a]utomatic number identification (ANI) and automatic location identification (ALI) information *that consists of the name, address, and telephone numbers of telephone subscribers shall be confidential*. Dissemination of the information contained in the 911 automatic number and automatic location data base is prohibited . . ." RI Stat. Ann. § 39-21.1-4 (emphasis added). The most logical reading of the prohibition in the second sentence is that it applies only to information designated as confidential in the first sentence. Verizon has not submitted any E911 listing data that contains the name, address, or telephone number of subscribers, nor did Verizon access that information when it pulled limited E911 data from the relevant database(s). Instead, Verizon merely counted the telephone numbers that fall within NPA-NXX ranges, by carrier submitting the record. This partial data pull does not extract any information that is identifiable to individual telephone subscribers.

Consistent with this view of the statute, the Rhode Island PUC requires Verizon to submit, on an annual basis, data on the number of facilities-based lines served by competitors in Rhode Island based on E911 data.³ The PUC obviously would not make this request if it believed Verizon's submission of limited E911 data violated state law.

Delaware. Verizon's submission of E911 data does not violate 16 Del. Code § 10010(a). That provision states that "[t]he information made available to the State, its representatives or providers of emergency services shall be used solely for purposes of delivering or assisting in the delivery of E-911 emergency services or services that notify the public of an emergency." 16 Del. Code § 10010(a). Here, the "information made available to the State" refers to the E911 data used to provide emergency services, which is the customer name, address, and telephone number. As noted above, Verizon has not submitted any E911 listing data that contains the name, address, or telephone number of subscribers, nor did Verizon access that information when it pulled limited E911 data from the relevant database(s).

Massachusetts. Verizon's submission of E911 data does not violate Mass. Ann. Laws Ch. 166 § 14A(d). That provision states that "[a] telephone company shall forward to any public safety answering point, or any other answering point equipped for enhanced 911 service, the telephone number and street address of any telephone used to place a 911 call. Subscriber information provided in accordance with this section shall be used only for the purpose of responding to emergency calls or for use in any ensuing investigation or prosecution." Mass. Ann. Laws Ch. 166 § 14A(d). On its face, the statute covers only "subscriber information," which is defined as "the telephone number and street address" of a subscriber. As noted above, Verizon has not submitted any E911 data that contains the name, address, or telephone number of subscribers, nor did Verizon access that information when it pulled limited E911 data from the relevant database(s).

³ See *Verizon-Rhode Island's Successor Alternative Regulation Plan*, Report and Order, Docket No. 3692, Order No. 18550 at 25 n.52, 39 (RI PUC Mar. 17, 2006); *Verizon-Rhode Island's Alternative Regulation Plan*, Report and Order, Docket No. 3445, Order No. 17417 at 61 (RI PUC Mar. 31, 2003).

Consistent with this view of the statute, the Massachusetts DTE requires Verizon to submit, on an annual basis, data on the number of facilities-based lines served by competitors in Massachusetts based on E911 listings data.⁴ The DTE obviously would not make this request if it believed Verizon's submission of data extracted from the E911 database violated state law. In fact, the DTE has found that the E911 database "does serve the purpose for which it was offered by Verizon – that is, to provide a reasonable estimate of CLEC facilities-based competitive entry."⁵

New Jersey. Verizon's submission of E911 data does not violate N.J. Stat. Ann. § 52:17C-10(a). That provision states that "[w]henver possible and practicable, telephone companies shall forward to jurisdictional public safety answering points via enhanced 9-1-1 network features, the telephone number and street address of any telephone used to place a 9-1-1 call. Subscriber information provided in accordance with this section shall be used only for the purpose of responding to emergency calls or for the investigation of false or intentionally misleading reports of incidents requiring emergency service." N.J. Stat. Ann. § 52:17C-10(a). On its face, the statute covers only "subscriber information," which is defined as "the telephone number and street address" of a subscriber. As noted above, Verizon has not submitted any E911 listing data that contains the name, address, or telephone number of subscribers, nor did Verizon access that information when it pulled limited E911 data from the relevant database(s).

New York. Verizon's submission of E911 data does not violate N.Y. County Law § 308(4). That provision states that "Records, in whatever form they may be kept, of calls made to a municipality's E911 system shall not be made available to or obtained by any entity or person, other than the municipality's public safety agency, another government agency or body, or a private entity or a person providing medical, ambulance or other emergency services, and shall not be utilized for any commercial purpose other than the provision of emergency services." N.Y. County Law § 308(4). As an initial matter, this provision applies only to records of individual E911 calls. Verizon has not provided such records here, and also did not access those records in compiling E911 data. In addition, this provision prohibits "utilization" of call records for a "commercial purpose." As Verizon has previously explained, the submission of limited E911 data in regulatory proceedings is not a commercial use of such data.

North Carolina. Verizon's submission of E911 data does not violate N.C. Gen. Stat. § 62A-9(a). That provision states that "[e]ach telephone service supplier shall provide subscriber telephone numbers, names, and service addresses to 911 systems when required by a local government. Although customer numbers, names and service addresses shall be available to 911 systems, such information shall remain the property of the disclosing service supplier. . . . This information shall be used only in providing emergency response services to 911 calls." N.C. Gen. Stat. § 62A-9(a). On its face, the statute covers only "subscriber telephone numbers,

⁴ See *Investigation by the Department of Telecommunications and Energy on Its Own Motion into the Appropriate Regulatory Plan to Succeed Price Cap Regulations for Verizon New England, Inc. d/b/a Verizon Massachusetts' Intrastate Retail Telecommunications Services in the Commonwealth of Massachusetts*, Order, Docket No. D.T.E. 01-31-Phase I at 97 n.59 (Mass. DTE May 8, 2002).

⁵ *Id.* at 84